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June 14, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Connect USVI Fund; WC Docket Nos. 18-143, 10-90, 14-58*

Dear Ms. Dortch:

Virgin Islands Telephone Corp. d/b/a Viya ("Viya") and its parent company ATN International, Inc. ("ATN") respectfully submit this letter to supplement their previous filings in the above-referenced docket regarding the Connect USVI Fund,[1] including the *ex parte* notices that Viya and ATN filed in connection with meetings with Federal Communications Commission ("Commission" or "FCC") staff and the Commissioners' offices.[2]

I. Introduction and Summary

As discussed in more detail herein, the United States Virgin Islands ("USVI" or "Territory") currently represents a unique universal service fund ("USF") challenge. Although Viya's Territory-wide fixed, fiber-based voice and broadband network was substantially damaged by Hurricanes Irma and Maria in September 2017, Viya has now restored fixed broadband service of at least 25 Mbps download and 3 Mbps upload ("25/3 Mbps") to more than

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[1] *See The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404 (2018) ("*Order*" or "*NPRM*," as applicable).

[2] *See* Emergency Petition of Virgin Islands Telephone Corp. dba Viya for Wireline Hurricane Restoration Support, WC Docket No. 10-90 (filed Dec. 6, 2017); Comments of Viya, WC Docket No. 18-143 et al. (July 26, 2018) ("Viya Comments"); Reply Comments of Viya, WC Docket No. 18-143 et al. (Aug. 8, 2018) ("Viya Reply Comments"); Letter from Douglas J. Minster, Vice President of Government and Regulatory Affairs, ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Sept. 21, 2018); Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Nov. 7, 2018); Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Nov. 29, 2018); Letter from L. Charles Keller, Counsel to ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Mar. 22, 2019) ("Viya March 22 Ex Parte"); Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (Apr. 19, 2019); Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 (May 16, 2019) ("Viya May 16 Ex Parte").

95 percent of USVI locations.[3] This is approximately the same percentage of locations to which Viya could provide 25/3 Mbps service before the storms. However, the cost of this restoration and Viya's ongoing hardening efforts is substantial. Absent USF support, the economic conditions in the USVI do not support these investments, and Viya would be unable to continue to provide services at affordable rates.

Although the Commission currently favors the use of competitive processes to award universal service support, it only has used this approach in unserved and underserved areas. The Commission has never used a competitive process to award USF support in an area, such as the USVI, where the incumbent local exchange carrier ("ILEC") provides subsidized, nearly ubiquitous Connect America Fund Phase II ("CAF-II") qualifying voice and broadband service. The situation in the USVI today is substantively different than the situations in which the Commission has used competitive processes in the past. Rather than extending service to unserved or underserved areas, the challenge in the USVI is how to maintain existing broadband service levels, and ensure continued increases in speed and capacity to fulfill future needs, in the face of extraordinarily high costs and low revenue opportunities. As a result, the Commission's past experience in formulating competitive processes and transitional mechanisms do not provide a useful model for the USVI today. Instead, the conditions in the USVI are more analogous to the circumstances in which the Commission has offered ILECs funding in exchange for accepting a statewide obligation to offer a specified service level, as Viya proposes in this proceeding.

Adopting a new USF allocation mechanism for the Territory in this proceeding that reduces the support historically awarded to Viya would pose difficult challenges for the Commission and is not in the best interest of USVI consumers. To ensure that customers retain service while a new subsidized provider overbuilds Viya's existing, subsidized network, the Commission could choose to provide duplicate support—both to Viya, to enable Viya to maintain its service levels in the short term, and to a new provider, to facilitate overbuilding by the new provider. But this represents a needlessly costly approach. Instead, the Commission could avoid such duplicative support by withdrawing support from Viya and redirecting it to the new provider. This approach, however, would cause Viya's customers to experience a reduced level of service while they wait for the new provider to deploy adequate facilities. Viya cannot maintain, much less expand, its existing service levels if its historical USF support is materially reduced. Consequently, neither of these novel approaches are in the best interest of the USVI. As a high-cost insular area that is still recovering from hurricanes and that faces substantial and ongoing fiscal challenges, the USVI is a particularly poor test bed for a new approach to allocating USF support that funds the overbuilding of an existing subsidized network that already is providing 25/3 Mbps service.

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[3] Almost immediately following the storms and prior to restoring its fixed network, Viya restored mobile and fixed wireless broadband services throughout much of the Territory to its customers, the general public, the USVI government, and USVI and Federal first responders. *See* Viya March 22 Ex Parte, Att. at 12; Viya Comments at 11; Emergency Petition of Viya, WC Docket No. 10-90, at 9 n.18 (Dec. 6, 2017); Comments of Viya, PS Docket No. 17-344, at 10-11 (Jan. 22, 2018).

For these reasons, Viya has urged the Commission to award the fixed Connect USVI Fund support to Viya for a ten-year term. This would be consistent with the statewide commitments offered to the price cap ILECs in CAF-II, and it would best advance the Commission's stated goals of (1) quick and efficient award of support; (2) for rebuilding, improving, and expanding service to reasonably comparable levels; (3) ensuring affordable rates; and (4) targeting funds efficiently, using competitive processes where such processes are appropriate.[4] If the Commission adopts Viya's proposed approach, then in addition to the 25/3 Mbps service that it already offers to more than 95 percent of locations, Viya commits also to provide 100/20 Mbps service to at least 25 percent of locations, and gigabit service to major anchor institutions within just 18 months. In addition, within four years, Viya commits to provide 100/20 Mbps service to 75 percent of locations and gigabit service to *all* anchor institutions. These services will be provided over a hardened, recoverable network featuring extensive undergrounding where feasible and, elsewhere, using composite poles rated for high winds. Further, Viya will continue to operate a state-of-the-art mobile broadband network to be used as a redundant path in case of emergency.

To the extent that the Commission wishes to use a competitive process to award fixed Connect USVI Fund support despite the comparative advantages and precedent supporting Viya's proposal, it is crucial that the Commission impose and enforce stringent eligibility and accountability requirements to ensure that awardees are able to meet their commitments. Absent adequate measures, the Territory faces a high risk of unnecessary service reductions or interruptions in service relative to the service levels that are available from Viya today. The Commission should adopt the eligibility criteria that it proposed in the *NPRM*, but also should require applicants to have pre-hurricane experience providing both voice *and* broadband service to residential *and* business customers. In addition, the Commission should ensure that all applicants are currently compliant with their ETC obligations and commitments. Further, the Commission should impose CAF-II financial and technical qualification obligations on applicants. The Commission also should impose accountability measures that are at least as stringent as CAF-II, including requiring a letter of credit in the cumulative amount of support already disbursed plus the expected amount for the coming year, a demonstration of access to sufficient spectrum if spectrum-based services are proposed, and CAF-II reporting, certification, and audit requirements.[5]

Any competitive process should be limited, consistent with Commission precedent, to the less than five percent of locations in the USVI where Viya does not currently offer at least 25/3 Mbps service. This could be accomplished by bifurcating the Connect USVI Fund into a $16.4 million per year "Broadband Maintenance and Improvement Fund" targeting currently served areas and a $2.25 million per year "Broadband Expansion Fund" targeting currently unserved areas. Via the Broadband Maintenance and Improvement Fund, the Commission could maintain the USF support that Viya currently receives, while the Broadband Expansion Fund could be awarded using a competitive process. This bifurcated approach would enable the Commission to

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[4] *NPRM*, 33 FCC Rcd at 5405 ¶ 5, 5414 ¶ 38.

[5] *See* 47 C.F.R. § 54.315(c).

utilize a competitive process consistent with its precedent to select a provider for unserved areas. It also would avoid undermining Viya's existing 25/3 Mbps service by funding overbuilding, while still maintaining current and effective USF support mechanisms where doing so is in the best interest of consumers.

If the Commission decides to use a competitive process more broadly, rather than limiting it to locations that Viya does not already serve, it should competitively award the entire $18.65 million of annual support to a single awardee to serve the entire USVI as a single support area. This Territory-wide approach, which is supported by USVI participants in this proceeding, is necessary to prevent cream-skimming. If carriers are permitted to self-define their service areas based on smaller units such as census blocks, the sparsely populated majority of the geographic area of the USVI will not be served adequately. Further, the Commission should not use this proceeding, which was intended to assist providers to recover from two back-to-back natural disasters of generational magnitude, to attempt to drive down universal support for the Territory to below pre-hurricane levels. Instead, the Commission should award all of the proposed $18.65 million in Connect USVI Fund support to the applicant whose proposal would provide the best service most quickly to the Territory.

If the Commission allocates all of the Connect USVI Fund using a competitive process, it should be structured as a single round in which each applicant is required to provide its "best and final" proposal, and these proposals should be subject to public comment. The proposals should be evaluated primarily based on the network speed and time-to-deployment proposed by applicants. Applicants should be required to propose deploying a minimum baseline service of 25/3 Mbps to 95 percent of the locations in the USVI within two years, and should be awarded points for faster speeds delivered to larger portions of the Territory's population more quickly. A demonstration of commercially reasonable resiliency should be a baseline gating requirement, rather than a factor garnering points, because resiliency is such a fact-specific and subjective quality. Finally, cost considerations should be factored into this process by ensuring that the Territory receives the maximum level of service as quickly as feasible for the dollar amount proposed for the Connect USVI Fund. The Commission should not assign points to the lowest-cost proposals, which would effectively drive down the overall amount of the universal service support available to the Territory to recover from the hurricanes and harden and expand networks.

II. THE USVI CURRENTLY REPRESENTS A UNIQUE UNIVERSAL SERVICE CHALLENGE

The USVI presents a universal service challenge fundamentally different from the current situation in Puerto Rico and from the challenges that the Commission faced in the CAF and Mobility Fund contexts. The most pressing need in the USVI today is *not* a mechanism to fund the expansion of service to unserved or underserved locations. There are very few unserved locations. Rather, the USVI's most important need is to maintain the existing availability of 25/3 Mbps service to over 95 percent of Territory's locations in the face of extraordinarily high costs and low revenue opportunities.

As a result, in its comments and reply comments in this proceeding, Viya argued that award of the fixed Connect USVI Fund support to Viya for a ten-year term[6] would be consistent with the Commission's decision in 2015 to provide CAF-II support in the first instance to ILECs.[7] Viya is aware that, in more recent years, the Commission has awarded support through a competitive process and has set out the framework for a plan to transition support away from ILECs in cases where new recipients won support in the CAF-II auction.[8] This recent shift provides the Commission neither precedent nor experience applicable to the use of a competitive process in the USVI today. The USVI is fundamentally different from any area where the Commission has used competition to award universal service support, and the transitional challenges in the USVI are considerably greater than in the mainland United States.

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[6] Viya agrees with the Commission that the Connect USVI Fund Stage 2 fixed support should be provided on an annualized basis over a ten-year period. *See NPRM*, 33 FCC Rcd at 5413 ¶ 32, 5414 ¶ 36. This provides the awardee with an adequate opportunity to amortize and recover its costs, including eligible expenditures that the awardee may have made to restore, expand, and improve (including hardening) its network prior to the allocation of funding by the Commission. As noted herein, Viya already has spent over $50 million on the restoration and improvement of its fiber-based network since the storms, net of insurance proceeds, Stage 1 fixed funding, and advanced USF support that the Commission determined not to offset, and Viya continues to invest in these efforts.

[7] *See* Viya Comments at 19-21; Viya March 22 Ex Parte, Att. at 17.

[8] *See generally Connect America Fund*, Report and Order, FCC 19-8 (rel. Feb. 15, 2019).) ("*CAF 2019 R&O*").

A. The Commission Has Never Used a Competitive Process to Award Support Where the ILEC Already Offers 25/3 Mbps Service

Viya restored its fixed broadband network by October 2018,[9] and it offers 25/3 Mbps service or better to at least 95 percent of the locations in the USVI today.[10] The current availability of 25/3 Mbps broadband service throughout almost all of the USVI makes the Territory substantively different from any area where the Commission has used a competitive process to award universal service support. Although Viya has rebuilt service to most of the USVI, USF support remains a necessary and fundamental component of any successful business model for *maintaining* adequate service in the Territory.[11] Even without the substantial cost of the restoration project, the high cost of providing service and the modest revenue opportunities in the USVI render the market unsustainable absent this support. Viya has explained at length in its previous filings in this proceeding the extreme challenges posed by the location, geography, climate, small population and resulting lack of economies of scale, cost of living, and anemic economy in the USVI.[12]

The Commission has no model for how to use a competitive process to award support in an area where the fundamental universal service challenge is *not* expanding service availability but rather *maintaining* existing high-quality voice and broadband service in the face of unusually high deployment and operational costs and low revenue opportunities. In the CAF-II auction, the Commission concluded that "only census blocks *lacking* 10/1 Mbps service from any provider

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[9] Viya March 22 Ex Parte, Att. at 13. Unlike other mobile and fixed wireless service providers, Viya's wireless networks remained operational during both Category 5 hurricanes. Further, Viya restored wireless service to 80 percent of the USVI population within two months and 100 percent within four months, as well as launching a new 4G LTE network within just weeks after the storms and many months ahead of its planned schedule. Viya also established 25 WiFi hotspots open to the general public and distributed over 11,000 MiFi devices to its customers. *See id.*, Att. at 12. Viya's decision to initially focus on restoring its wireless networks enabled Viya to provide communications services to its USVI customers, other residents of the USVI, the USVI government, and Territory and Federal first responders long before other providers (, including Broadband VI, LLC ("BBVI") and Sprint) had restored their service. And these wireless services acted as an effective stopgap in the interim period while Viya fully restored its fiber-based network, which is a more resource-intensive restoration process. Viya is in the unique position of having a 4G LTE network as a diverse emergency backup for a fiber-based network.

[10] *Id.* Att. at 13. There is no fully accurate means available to account for the exact number of locations in the USVI. Many homes do not have addresses, commercial geocoding is unavailable, and the available census data is dated and is likely to be inaccurate due to population shifts in the aftermath of Hurricanes Irma and Maria. Viya's 95 percent service estimate is based on census and other available data, as well as Viya's decades of experience serving the USVI, including reconnecting residences and businesses after the hurricanes.

[11] *See NPRM*, 33 FCC Rcd at 5416 ¶ 46 (seeking comment on whether to exclude from eligibility areas where service has already been rebuilt).

[12] Viya Comments at 2, 15-18; Viya March 22 Ex Parte, Att. at 5,15. In addition, Viya has carrier-of-last-resort obligations in the USVI that require Viya to provide voice services to all requesting locations, no matter the cost. *See* Viya Comments at 19-21, 24; Viya Reply Comments at 7.

will be eligible for bidding."[13] Similarly, in the Mobility Fund Phase I auction, the Commission awarded "support to carriers that commit to provide 3G or better mobile voice and broadband services in *areas where such services are unavailable*."[14] Likewise the Tribal Mobility Fund Phase I provided "one-time support to deploy mobile voice and broadband services to *unserved* Tribal lands."[15] In contrast to these examples, in the USVI Viya already provides nearly Territory-wide access to 25/3 Mbps or better broadband service, as well as voice service. Consequently, the challenge for the Connect USVI Fund is to maintain an excellent level of service Territory-wide, including increasing speeds as technology advances, at affordable rates, in the face of unusually high deployment and operations costs and low revenue opportunities.

As Viya discussed in its comments, the costs of providing service in the USVI are exceptionally high due to factors such as added shipping, transportation, and power costs; the difficult climate; and challenging terrain.[16] At the same time, the opportunity to recoup those costs through local rates is limited by the depressed state of the local economy. Even compared to other insular territories such as Puerto Rico, the USVI has a small population (about 100,000 people) with very limited buying power and an economy that is overwhelmingly dependent on tourism. As a result, Viya's investment to construct, and then to restore, its ubiquitous network depends upon the continued availability of USF support at levels no less than pre-storm levels.

In light of these factors, the Commission's experience awarding USF support using a competitive process to *expand service to unserved areas* does not provide a suitable model for how to structure a competitive process in the USVI. Moreover, the Commission should not use the USVI as a test bed for a new and novel approach to allocating universal support competitively in areas already adequately served by a subsidized network. The USVI's economy was very weak before the storms devastated commercial activity in the Territory. Therefore, it seems unwarranted to expose the USVI's residents to the additional risk inherent in replacing a working USF model in the Territory with a novel application of the Commission's preferred competitive approach, especially at the beginning of the next hurricane season.

B. The Commission Does Not, and Should Not, Use Universal Service Support to Fund Overbuilding, Particularly of Supported Networks

In the USVI, the award of universal service support to anyone other than the ILEC would result in costly overbuilding of Viya's fiber-based voice and broadband network, which was

[13] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5968 ¶ 51 (2016) ("*CAF Phase II Auction Order*").") (emphasis added).

[14] *Mobility Fund Phase I Auction Scheduled for September 27, 2012*, Public Notice, 27 FCC Rcd 530, 531 ¶ 2 (WTB & WCB 2012) (emphasis added).

[15] *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013*, Public Notice, 28 FCC Rcd 2764, 2765 ¶ 2 (WTB & WCB 2013) (emphasis added).

[16] *See* Viya Comments at 2. Regardless of the business model or technology they utilize, all providers in the USVI face unique economic and environmental challenges that increase their costs relative to providers on U.S. mainland.

itself built and currently is maintained in substantial part with USF support. In the *Transformation Order*, the Commission concluded that its "prior policy of supporting multiple networks may not be the most effective way of achieving [its] universal service goals," and the Commission decided "not to subsidize competition through universal service in areas that are challenging for even one provider to serve."[17] In the years since, as Chairman Pai has noted,

> The Commission has repeatedly declined to provide duplicative support, i.e., support to two or more carriers to build out the same area. The FCC eliminated the identical support rule in 2011. [It] offered model-based support to just one carrier per area in both phases of the Connect America Fund as well as in rate-of-return areas. And [its] reverse auctions are designed to select just one winning bidder to support in each area. The reason is obvious: Paying two carriers to construct duplicative facilities is just a waste of taxpayer funding.[18]

In recent months, Commissioner O'Rielly has expressed similar concerns over the use of USF dollars to "overbuild existing networks, particularly when those networks subject to overbuilding were themselves built with Universal Service Fund support."[19]

Viya's network, which was constructed in substantial part and currently is maintained using USF support, already reaches more than 95 percent of the locations in the USVI, and no other provider currently operates a terrestrial wireline network that reaches a significant portion of the USVI population. As a result, any awardee in a competitive process other than Viya necessarily will use the Connect USVI support to overbuild Viya's network. Thus, awarding the fixed Connect USVI Fund support to Viya is the only approach that is consistent with the Commission policy against funding the overbuilding of a subsidized network.

C. Transitional Issues in the USVI Would Pose Substantial Challenges Unlike Those the Commission Has Addressed Elsewhere

Having now awarded support through a competitive process in the CAF-II auction, the Commission has experience regarding how to formulate a transition away from an incumbent provider.[20] That experience, however, is limited to areas where no CAF-qualifying terrestrial

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[17] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17780 ¶ 319 (2011) ("*Transformation Order*").

[18] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10208 n.4 (2016) (Dissenting Statement of Commissioner Ajit Pai).

[19] Letter from Michael O'Rielly, Commissioner, FCC, to Radha Sekar, CEO, USAC, at 1 (Mar. 7, 2019); *see also* Michael O'Rielly, Commissioner, FCC, Remarks Before the ACA Connects' 26th Annual Summit, at 2 (Mar. 20, 2019) ("[N]ew federal money allocated by Congress to facilitate broadband deployment has the chance, and dare I say likelihood, to be used to fund other providers to overbuild areas where you serve. In other words, federal monies could be used to bring an artificial, subsidized, government-blessed competitor to overbuild your network.").

[20] *See generally Connect America Fund,* Report and Order, FCC 19-8 (rel. Feb. 15, 2019).

fixed broadband service is available from the incumbent or another provider; the Commission has not confronted a transition in an area such as the USVI where the incumbent provider is already offering 25/3 Mbps service. As a result, the Commission's CAF-II experience is not applicable to the USVI. It does not address the funding transition that would become necessary if a provider other than Viya is selected through a competitive process. Because Viya already offers almost all USVI residents access to 25/3 Mbps or better fixed broadband service, a process to transition to a new provider in the USVI would raise fundamentally different questions than were raised in the CAF-II proceeding. In particular, the Commission would need to determine how to cost-effectively enable the incumbent to maintain existing service levels, while concurrently providing support to the new awardee to build out service.

If the Commission attempted to design such a transition, one option would be for the Commission to transition support immediately, or over a short period of time, from Viya to the new awardee to fund the new awardee's build out of CAF-qualifying service throughout the Territory. However, the withdrawal of support from Viya would result in many or all of these customers losing their existing affordable voice and broadband service[21] while they wait—potentially for years[22]—for the new provider to reach them with CAF-qualifying service. The Commission has never managed a support transition that involved the potential degradation of customers' existing service, and the risk is compounded in the USVI, which always has been an economically fragile insular area and currently is recovering from two major back-to-back natural disasters. To avoid this disruption, the Commission could decide to provide duplicative support to both Viya and the new provider during the transition period for an extended period of years. But providing duplicative support would require a budget significantly higher than that proposed in the *NPRM.*

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[21] *See* Viya Comments at 9-10 ("[F]ollowing its 2016 rate case at the USVI PSC, Viya has a revenue shortfall (after receipt of high-cost support) of approximately $7.2 million per year."); Viya May 16 Ex Parte at 3 ("Viya's most recent rate case before the USVI Public Services Commission – which was conducted two years before the hurricanes and thus did not include the additional costs of reconstruction – concluded that, even with rate increases, Viya was left with a $7 million annual shortfall below its revenue requirement."). Thus, Viya cannot afford to maintain (much less expand) current service levels at current rates if its USF support is withdrawn. At best, Viya would have to freeze in place its current service and identify cost-cutting measures, as well as potentially seeking authority to increase rates.

[22] *See, e.g.*, Letter from Stephen E. Coran, counsel to BBVI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, att. at 13 (filed Feb. 13, 2019) (proposing a buildout schedule that results in deployment to only 40 percent of the USVI in year three and 100 percent in year six); Letter from Michael Meluskey, CTO and Founder, BBVI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, et al., at 3 (Nov. 9, 2018) ("BBVI November 2018 Ex Parte") (proposing a buildout schedule that results in deployment to only 40 percent of the USVI in year five and 100 percent in year eight, with bonus points awarded for deployment to 50 percent of the USVI in year four and 100 percent in year six); Letter from Stephen E. Coran & Philip A. Bonomo, Counsel to BBVI, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-143 & 11-42, Att. at 21 (Oct. 23, 2017) (proposing to require 60 percent deployment by year four and 100 percent at year six).

Another significant difference between the transitional challenges that the Commission faced in unserved areas, addressed in CAF-II, and the current situation in the USVI is that the stakes are significantly higher for the affected customers. If a new awardee in the Territory fails to perform its obligations, the negative ramifications to the people and businesses in the USVI would be complicated and magnified by the Territory's tenuous economic conditions. In CAF-II, the Commission established safeguards to ensure that the Commission could reclaim any support awarded if the awardee failed to perform its obligations.[23] The areas where the new awardee failed to perform would presumably be reallocated to a new awardee through a future process.[24] But applying this approach in the USVI would result in significant delay and service disruptions that would be disastrous for the USVI economy, especially as it struggles to recover from devastation. Moreover, in the CAF-II context, if an awardee fails to perform its commitments, customers that previously were unserved will continue to be unserved until a new awardee is determined. By contrast, in the USVI, if Viya is unable to maintain its existing network due to a substantial reduction or elimination of USF support, and the new awardee fails to perform, the Territory's residents could *lose* a broadband service previously available to them and thereby become *newly* unserved.

For all of these reasons, the transition rules that the Commission has formulated for CAF-II would be inadequate to address the transitional challenges in the USVI, and the Commission's experience to date in formulating transitions from legacy to competitive support mechanisms does not provide useful guidance for formulating a transitional mechanism in the USVI.

III. ALLOCATING CONNECT USVI FUND SUPPORT TO VIYA WOULD ACHIEVE THE COMMISSION'S OBJECTIVES

In the *NPRM*, the Commission stated that it seeks to "promote [its] aim of providing support quickly and efficiently to speed the rebuilding, improvement, and expansion of service" and to ensure that "people living in the territories have access to reasonably comparable, affordable fixed voice services and broadband-capable networks."[25] The Commission sought to accomplish these goals in a fiscally responsible way "to ensure that funds are targeted efficiently,"[26] using competitive processes "where appropriate."[27] Thus, the Commission's goals can be summarized as (1) quick and efficient award of support; (2) for rebuilding, improving (including hardening), and expanding service to reasonably comparable levels; (3) ensuring affordable rates; and (4) targeting funds efficiently using competitive processes where such processes are appropriate.

[23] *See* 47 C.F.R. § 54.320.

[24] The precise parameters of a potential re-award process have never been defined.

[25] *NPRM,* 33 FCC Rcd at 5414 ¶ 38.

[26] *Id.*

[27] *Id.* at 5405 ¶ 5. For the reasons discussed in Sections II.A.-C., a competitive process is not appropriate in the USVI.

Awarding the fixed Connect USVI support to Viya is the best way to achieve these goals in light of the unique characteristics of the USVI market.[28] First, awarding the support to Viya is certainly the quickest and most efficient approach. Over a year and a half has passed since Hurricanes Irma and Maria barreled through the USVI, and nearly a year has gone by since the Commission released the *NPRM.* Developing and implementing a competitive process is a complex endeavor that will take a significant amount of additional time, in part because, as discussed above, the Commission has not used a competitive process in an environment like the USVI where 25/3 Mbps service already is available.[29] By contrast, awarding the support to Viya is entirely consistent with the rationales that underlay the Commission's 2015 statewide offers of support to price cap ILECs on the mainland: (i) the ILEC is the only provider in the subject areas with wireline broadband facilities, (ii) there are few (if any) other bidders with the financial and technological capabilities to deliver scalable broadband that will meet Commission requirements over time, (iii) the ILEC is likely to have the same or lower costs as a competitor, and (iv) the ILEC has carrier of last resort obligations that must be addressed.[30]

Adopting Viya's proposal also would be the best way to ensure that the support is put to its optimal use for rebuilding, expanding, and improving service and ensuring that it is offered at rates reasonably comparable to urban areas. If granted the full amount of fixed Connect USVI Support for a ten-year term, Viya commits to provide:

- Within 18 months:
  - CAF-II "Baseline" (25/3 Mbps, 150 GB) to at least 95 percent of locations
  - CAF-II "Above Baseline" service (100/20 Mbps, 2 TB) to 25 percent of locations
  - Gigabit service to major anchor institutions
- Within 4 years:
  - CAF-II "Above Baseline" service (100/20 Mbps, 2 TB) to at least 75 percent of locations
  - Gigabit service to all anchor institutions
- A hardened, recoverable network, including:
  - Extensive undergrounding where feasible and use of high wind-rated poles
  - State-of-the-art wireless broadband network as redundant path in emergency

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[28] As Viya has previously explained, the USVI market is a uniquely difficult and expensive market in which to operate due to its geographic isolation, mountainous topography, difficult climate, and the Territory's economic challenges. The pre-hurricane median household income in the USVI was more than 30 percent lower than the mainland United States, the unemployment rate was more than twice as high, and the poverty rate was 50 percent higher. Viya Comments at 2. In addition, the USVI's low population limits the economies of scale possible in the provision of any service. Despite this, the USVI is not an unserved area. In part with the assistance of existing USF support, and significant private investment, Viya has restored service to over 95 percent of the Territory.

[29] *See supra* Sections II.A.-B.

[30] Viya Comments at 18 24 (citing *Transformation Order*, 26 FCC Rcd at 17730-31 ¶ 175.).

This approach would target funds in a simple, straightforward, and highly efficient manner because it would direct the support to the carrier that is able to provide the greatest value to the people of the USVI—the highest speeds and capacities and lowest latency—most quickly. No other provider is able to provide ubiquitous, fiber-based service in the USVI without making the Territory endure a delay of multiple years, which is a cost the USVI economy cannot bear.

Moreover, this approach would recognize and reward Viya's parent company ATN for the substantial restoration funding that it advanced to Viya based in part on Commission assurances.[31] Rather than wait for the Commission to determine how to deliver badly needed aid to the USVI and Puerto Rico, ATN promptly invested over $50 million to restore and harden Viya's network (net of insurance proceeds, FCC Stage I support, and advanced USF support), and Viya continues to invest in these efforts.[32] ATN took this pro-consumer measure, which is consistent with the Commission's objective to accelerate restoration,[33] despite the immense

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[31] After the hurricanes, Chairman Pai and Commission staff visited the Territory. Those visits included very useful and productive meetings with Viya's leadership and included tours led by Viya of the storm damage to Viya's network and Viya's ongoing rebuilding efforts. During and after those visits, the Chairman and Commission staff made clear that additional support would be forthcoming. Chairman Pai noted it is "critical for the FCC to not only address today's urgent needs, but to look ahead to support the broadband networks the islands need to thrive in the 21st Century." *See* News Release, FCC, *FCC Approves Additional Funding To Restore Communications Networks In Puerto Rico And The U.S. Virgin Islands*, at 1 (May 29, 2018). Commissioner Carr likewise noted that "[i]t's going to take a lot of work and financial resources to repair the destruction," and that the funding "will allow providers to rebuild and speed up efforts to harden broadband infrastructure to prevent a repeat of the 2017 hurricane season." *NPRM*, 33 FCC Rcd at 5440. (Statement of Commissioner Brendan Carr).

[32] BBVI purports that its recovery time after the hurricanes was faster than Viya's. *See* Reply Comments of BBVI, WC Docket No. 18-143, at 3-4 (Aug. 8, 2018) ("BBVI Reply Comments"). This assertion is misleading at best. BBVI operates an unlicensed wireless network that, prior to the hurricanes, served a small fraction of the number of customers served by Viya's fiber-based wireline network, and BBVI generally provided much lower broadband speeds. *See* Reply Comments of BBVI at 2, WC Docket No. 11-42 et al., at 2 (Mar. 21, 2019) (stating that BBVI "fully restored its network *to support the same 5/1 Mbps service it provided prior to the hurricanes*"). Consequently, the task of restoring BBVI's network paled by comparison to the undertaking faced by Viya with respect to its much more facility-intensive wireline network. BBVI's restoration effort was more similar to, but still less challenging than, Viya's efforts to restore its mobile networks. Whereas BBVI took eight months to restore its unlicensed fixed wireless network (to 5/1 Mbps speeds), Viya in four months fully restored its *two* mobile networks *and* launched a new 4G LTE network months ahead of its initial plans. (Viya restored wireless connectivity to 80 percent of the USVI in two months.) This was facilitated, in part, by the fact that Viya's wireless networks never fully lost connectivity during the storms. As a result, FEMA and other first responders sought service from Viya immediately after the hurricanes. *See* Viya March 22 Ex Parte, Att. at 12. Despite the enormity of the task, Viya restored its wireline network (to 25/3 Mbps speeds) to the nodes in nine months and to its customers' homes in 13 months. Viya March 22 Ex Parte, Att. at 13.

[33] *See, e.g.*, *NPRM*, 33 FCC Rcd at 5409 ¶ 19 (noting the importance of "conducting restoration operations as quickly as possible"); *id.*¶. at 5414 ¶ 38 (requesting comment "how to best promote our aim of providing support quickly and efficiently to speed the rebuilding, improvement, and expansion of service.").

damage to the Territory's economy, and Viya's revenue stream, caused by the storms.[34] This enabled Viya to begin its restoration efforts immediately and to complete the restoration in advance of the Commission's Stage 2 decision in this proceeding. But these investments are untenable absent the continuation of universal service support at or above pre-hurricane levels.

IV. Any Use of a Competitive Process in the USVI Should Be Tailored to the Circumstances of this Unique Territory

A. The Commission Should Adopt and Strictly Apply Stringent Eligibility and Accountability Requirements to Ensure a Pool of Rational Participants and Guard Against Program Failure

If, despite the foregoing, the Commission decides to use a competitive process to award Connect USVI Fund fixed support, it is crucial that the Commission adopt stringent eligibility and accountability requirements to ensure that the awardee is capable of timely fulfilling its commitments and that it successfully does so. As the record in this proceeding amply reflects, the USVI economy was tenuous at best before Hurricanes Irma and Maria, and it is even worse now. Continued access to reliable, high-quality voice and broadband service is necessary for the people and economy of the USVI to recover. As a result, failure of an award recipient to meet its service commitments would be even more dire in the case of the Connect USVI Fund than in CAF-II. The Commission therefore must ensure that stringent participant eligibility and accountability measures are adopted and strictly applied to ensure that awardees timely provide the services that they commit to provide.[35]

As an initial matter, the Commission should, at minimum, adopt the eligibility criteria that it proposed in the *NPRM* and screen providers that seek to participate in any competitive process to determine their eligibility in advance of permitting them to submit competitive proposals. This approach will ensure a pool of rational participants in the Commission's competitive process and thereby substantially reduce the likelihood that the Commission will waste valuable time and resources evaluating proposals by providers that do not satisfy the Commission's eligibility criteria and that may not be capable of adequately performing.

Specifically, to be eligible to participate in any competitive process adopted by the Commission, an applicant should be required to (i) have operated a facilities-based fixed network and provided broadband service in the USVI prior to the hurricanes as demonstrated by June 2017 FCC Form 477 data and (ii) be designated a high-cost eligible telecommunications carrier ("ETC") by the PSC.[36] The Commission also should confirm, as a distinct eligibility criteria, that

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[34] Unlike other utilities in the USVI, Viya has not raised its local rates to assist it to recover its restoration costs. *See* James Gardner, *PSC Approves Temporary Base Rate Increase for WAPA*, The St. Croix Source (Apr. 17, 2019.).

[35] *NPRM*, 33 FCC Rcd at 5415 ¶ 43.

[36] *Id.* at 5415 ¶¶ 42-44.

an applicant is compliant with its ETC obligations and commitments.[37] Further, Viya also proposed that the Commission only deem providers eligible if they provided fixed voice *and* broadband service prior to the hurricanes to residential *and* business customers.[38] Only providers with this experience are likely to successfully provide voice and broadband service to residential and business customers throughout the USVI today. Finally, the Commission should adopt applicant qualification requirements that are at least as comprehensive as the CAF-II requirements, which require applicants to demonstrate that they are financially and technically qualified to provide the applicable minimum service levels.[39]

The Commission also should adopt accountability and qualification measures applicable to tentative awardees that are at least as stringent as the CAF-II requirements.[40] Thus, prospective support recipients should be required (i) to provide a letter of credit from a U.S. bank meeting the CAF-II acceptability criteria for the cumulative amount of support already disbursed plus the amount to be disbursed in the coming year,[41] and (ii) if an applicant proposes spectrum-based fixed services, provide a clear demonstration of access to spectrum sufficient to provide the services proposed.[42] In addition, the Commission should impose standard CAF-II reporting and certification requirements and require annual audits by the Universal Service Administrative Company.[43] Further, consistent with the Commission's proposal in the *NPRM*, if an applicant does not timely achieve each of the service benchmarks set forth in its proposal, all additional support should be withheld until the benchmark is achieved, and the applicant should be required to relinquish previously disbursed support if the benchmark is not achieved within 12 months.[44]

B. Award Support Through Competition, If at All, Only in Areas Where 25/3 Mbps Service Currently Is Unavailable

Any use of a competitive process to award Connect USVI Fund fixed support should only be applicable to locations to which Viya does not already provide CAF-qualifying voice and broadband service (i.e., voice service and broadband service of 25/3 Mbps or better).[45] This

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[37] *See, e.g.*, Letter from Phillip R. Marchesiello, Counsel to Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 & nn.17-18 (filed Apr. 26, 2019) (questioning whether BBVI adequately advertises its Lifeline offering in compliance with Commission and PSC rules).

[38] *See* Viya Comments at 26.

[39] 47 C.F.R. § 54.315(a)(2).

[40] *See id.* §§ 54.315(b), 54.313, 54.316.

[41] *Id.* § 54.315(c). *See also NPRM*, 33 FCC Rcd at 5421 ¶ 69.

[42] 47 C.F.R § 54.315(a)(6).

[43] *NPRM*, 33 FCC Rcd at 5420 ¶ 65, 5421 ¶ 70.

[44] *Id.* at 5421 ¶ 68.

[45] AT&T Services, Inc. ("AT&T") has endorsed this general policy approach to distribution of Connect USVI Fund Stage 2 fixed support: "[F]unding should be used to expand broadband to currently unserved areas (i.e., the eligible census blocks), *not* to overbuild providers currently offering broadband service. The Commission should reject proposals to require Stage 2 Fixed Fund winning bidders to offer

approach would be more consistent with Commission precedent for the use of a competitive process to award universal support because it would not involve funding an awardee to overbuild an existing, subsidized network.[46] To implement this approach, the Commission could bifurcate the Connect USVI Fund into a Broadband Maintenance and Improvement Fund to support maintenance, operations, and affordability in locations where 25/3 Mbps service already is available and a Broadband Expansion Fund for locations where it is not. Competition could be used to award support for the Broadband Expansion Fund consistent with Commission precedent.

The budget for the Broadband Expansion Fund should be $2.25 million per year and the budget for the Broadband Maintenance and Improvement Fund should be equivalent to the USVI's existing support of $16.4 million per year. This provides an overall budget of $18.65 million per year, which is the amount allocated by the Commission in the *NPRM*.[47]This proposed allocation recognizes that the less than five percent of remaining unserved locations in the Territory are costlier to serve than the areas where service already has been restored by providing over 12 percent of the total Connect USVI Fund budget to the Broadband Extension Fund. Further, this approach is far less complex than allocating support using another data source such as CAM outputs—particularly given the uncertainty of post-hurricane customer locations in the USVI.[48] The allocation of the remaining $16.4 million per year to the Broadband Maintenance and Improvement Fund is consistent with the current frozen support level that Viya historically has received to facilitate its provision of high-quality voice and broadband service at affordable rates,[49] and it is the minimum amount that Viya should receive in return for, and to facilitate, the commitments discussed above.

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broadband across the entire bidding area as this will cause overbuilding, which is inconsistent with the Commission's established USF principles." Letter from Raquel Noriega, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143 et al., at 2 (Dec. 31, 2018) ("AT&T Ex Parte").

[46] As discussed above, Commission policy and precedent do not support awarding funding through a competitive process in areas where Viya already provides CAF-qualifying supported service. *See supra* Section II.

[47] *NPRM*, 33 FCC Rcd at 5413 ¶ 30.

[48] *See id.* at 5417 ¶ 52.

[49] Prior to the hurricanes, Viya was prepared to demonstrate to the Commission that Viya had a legitimate need for at least $16.4 million in support annually to support the preservation and advancement of existing service and the maintenance of affordable rates in the tightly circumscribed economy of the USVI. *See* Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Att. at 5 (Nov. 15, 2017). Viya prepared these materials for a meeting with Commission staff regarding its frozen support public interest obligations, but the meeting was cancelled because Hurricane Irma was bearing down on the Territory as the meeting date approached, making travel from the USVI impossible. Since Hurricanes Irma and Maria, Viya and ATN thus far have invested $50 million in network restoration net of insurance proceeds, Stage I support, advanced USF support, and the impact of the storms has further reduced revenue opportunities in the Territory.

Under this approach, Viya proposes that the Commission select the applicant that commits to provide a minimum of 25/3 Mbps, CAF-II-qualifying service[50] to the remaining unserved locations in the USVI most quickly.[51] The awardee should be required to provide service to these locations on a linear basis over the time period that it specified. For example, if an applicant proposes to serve these unserved areas within four years, it should be required to serve 25 percent of the unserved areas in the first year, and an additional 25 percent each year thereafter.

C. If All Connect USVI Fund Support in the USVI Will Be Awarded Competitively, All Support Should Be Awarded to a Single Provider and the Entire Territory Should Be A Single Support Area

If the Commission decides to use a competitive process to award all of the Connect USVI Fund support, which Viya has demonstrated is inadvisable and without precedent, the Commission should award all of the support to a single provider to serve the entire USVI as a single support area. As Viya has discussed at length in this proceeding,[52] the geography and demographics of the USVI create an enormous risk of cream-skimming if providers are permitted to select their own service territories based on smaller geographic units such as census blocks or tracts.[53] Because of its diminutive size and very small population spread across four main islands, economies of scale only can be realized, if at all, if a single awardee is selected for the entire Territory. Further, any other approach will result in inadequate and unaffordable service to sparsely populated areas, which comprise the majority of the USVI.

In addition, the Commission should award the entirety of the Connect USVI Fund support to the selected provider, rather than using a competitive process to attempt to drive down the total amount of support awarded to the USVI. Unlike other recent high-cost support assignment processes, this proceeding, which is intended to assist the Territory to rebound from the unprecedented destruction wrought by Hurricanes Irma and Maria, is ill-suited to efforts to

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[50] This includes 25/3 Mbps speed, a minimum usage allowance of the higher of 150 GB per month or the average usage of a majority of fixed broadband customers, and latency at or below 100 milliseconds. 47 C.F.R. § 54.309.

[51] Viya can identify those geographic regions in the Territory in which Viya does not offer service. The awardee would then be responsible for offering CAF-II-compliant service to each of the individual locations that can be identified in these regions.

[52] Viya Comments at 33-35; Viya Reply Comments at 12-13; Viya March 22 Ex Parte, Att. at 21.

[53] *See also* Comments of BBVI, WC Docket No. 18-143 at 6-7 (July 26, 2018) ("Broadband VI believes that the entire Virgin Islands should be treated as a single geographic bidding area. This approach will allow award recipients to save costs by increasing their level of production to a degree that only makes economic sense if the islands are serviced collectively. It will also promote a uniform, consistent level of service to all Virgin Islanders."); BBVI Reply Comments at 8 ("Both Broadband VI and Viya urged the Commission to require entities seeking Stage 2 support to apply for support at the Territory level, and to not award support based on smaller geographic areas. No commenter disagreed with this proposal. The Commission therefore should adopt this recommendation."). *But see* BBVI November 2018 Ex Parte at 2 (repeating proposal to treat the entire USVI as a single territory but also offering alternative proposals).

drive down support levels.[54] To the contrary, the need for post-hurricane network restoration intuitively requires a greater amount of support than otherwise is required merely to maintain affordable service in a high-cost area. Thus, rather than pitting provider proposals against each other based on proposed support levels, the Commission should, as further discussed below, evaluate proposals primarily based on the quality of service a provider proposes and how quickly the provider commits to making the service available. All of the available support should then be awarded to the applicant with the best proposal.

D. Any Competitive Process Should Most Heavily Weight Network Performance and Speed of Deployment

The economy of the USVI, both during hurricane recovery and thereafter, depends upon the availability of high-quality voice and broadband services Territory-wide, and the Connect USVI Fund is intended to achieve that goal. As the Commission stated in the *NPRM*, the "long-term rebuilding, improvement, and hardening of fixed voice and broadband service is critical in helping Puerto Rico and the U.S. Virgin Islands recover from the devastation caused by the hurricanes."[55]

Viya agrees with the Commission that network performance, deployment timing, network resiliency, and the amount of subsidy per location served are all relevant considerations.[56] However, to achieve the Commission's goals in this proceeding, any competitive process in the USVI should focus primarily on network performance[57] and deployment timing. As further set forth below, these two factors in the aggregate should account for the overwhelming majority of the possible scoring in the Commission's competitive process. They are the foundation of the USF program and are critical to ensuring that USVI residents and businesses have access to voice and broadband services that are reasonably comparable to those available to other Americans and that are at least of the quality of the 25/3 Mbps broadband that Viya currently offers to 95 percent of the locations in the USVI.

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[54] *See, e.g., NPRM,* 33 FCC Rcd at 5408 ¶ 13 ("In stage two, we propose to make about $699 million available in the Uniendo a Puerto Rico Fund and about $191 million available in the Connect USVI Fund to rebuild, improve, and expand voice and broadband networks on the islands in the longer term."); *id.* at 5412 ¶ 28 ("We recognize that a longer-term solution is needed to rebuild, improve, and expand service in Puerto Rico and the U.S. Virgin Islands given the widespread devastation to communications networks caused by the hurricanes.").

[55] *Id.* at 5413 ¶ 34.

[56] *Id.* at 5418 ¶ 55.

[57] With respect to network performance, as in the CAF-II context, the Commission should favor "higher speeds over lower speeds, higher usage allowances over lower usage allowances, and lower latency over higher latency." *CAF Phase II Auction Order*, 31 FCC Rcd at 5957 ¶ 16.

By comparison, although resiliency is a relevant consideration, its measurement is too subjective and fact-specific to attempt to weight it in a competitive process.[58] The appropriateness of network hardening measures varies with the nature of a network (e.g., fixed wireless versus wireline networks) and the network threats being mitigated (e.g., hurricanes, power outages, earthquakes, flooding, etc.). Consequently, rather than utilizing resiliency as a weighting factor, Viya proposes below that a demonstration of adequate resiliency be part of the minimum requirements applicable to every proposal, rather than as a factor that generates points. For purposes of this showing, Viya agrees that the key elements of resiliency are last-mile path diversity, commercially reasonable hardening of facilities, and adequate on-island restoration resources such as replacement facilities and repair crews and trucks.

Although per-location cost is relevant, it also should not be a primary consideration. Applicants should not be required to "bid" against each other in an effort to drive down overall Connect USVI Fund expenditures. A competitive process that gives primary weight to reducing the subsidy per location[59] runs counter to the Commission's goal of ensuring "long-term rebuilding, improvement, and hardening of fixed voice and broadband service," which is "critical in helping Puerto Rico and the U.S. Virgin Islands recover from the devastation caused by the hurricanes."[60] Further, it seems inappropriate to use a proceeding aimed at assisting the recovery of the USVI and Puerto Rico from catastrophic disasters to attempt to drive down the universal service support received by the territories prior to their devastations. Consequently, rather than assign points to lower costs, the Commission should factor in costs by retaining the proposed budget level of $18.65 million per year, which is only slightly above pre-hurricane support levels, and seeking to secure substantial commitments from applicants to provide the quickest possible deployment of the highest-quality, fastest broadband service possible for that budget amount.

In light of the foregoing, Viya sets forth below its proposal for a competitive process that the Commission should use if, despite Viya's advocacy, the Commission decides to use a competitive process in the USVI (either for unserved areas or Territory-wide). Viya believes that this approach to a competitive process, although still inferior to the award of support to Viya, will maximize the availability in the USVI of the best-quality service to the largest number of locations most expeditiously at the proposed budget level.

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[58] *See* AT&T Ex Parte at 2-3 ("As for resiliency requirements, AT&T urged the Commission not to adopt resiliency requirements in this proceeding that are specific to Stage 2 Fixed Fund and Mobile Fund recipients. We noted that the Commission is considering these issues in other dockets and whatever decisions are reached in those proceedings, the Commission should apply the same requirements to providers operating in these territories.").

[59] *See NPRM*, 33 FCC Rcd at 5418 ¶ 55 ("We propose to select winning proposals based primarily on price per location served....").

[60] *Id.* at 5413 ¶ 34.

Single Round of Proposals. Once deemed eligible to participate in the competitive process, applicants should be required to submit their "best and final" proposals in a single round. The details of each proposal should be required to be submitted publicly,[61] and the public should be provided with an opportunity to comment on each proposal. Although applicants should be permitted to respond to these comments, they should not be permitted to modify their proposals after the proposals initially are submitted. The Commission should select a single awardee for the Territory based on its comparative evaluation of the respective proposals and the public comments.

Establish a Minimum Standard for Proposals. The Commission should establish a minimum "baseline" standard of 25/3 Mbps consistent with existing service levels in the USVI and the Commission's definition of broadband. As the Commission has stated, "access to 25/3 Mbps broadband service is not a luxury for urban areas, but important to Americans wherever they live."[62] Chairman Pai has noted that 25/3 Mbps service is "the FCC's definition of 'broadband'" and necessary for "full digital opportunity."[63] Thus, under Viya's proposed scoring system, providing service meeting the CAF-II "baseline" service tier requirements[64] to at least 95 percent of the USVI within two years should be the minimum service standard for participation in the fixed Connect USVI Fund.

The service floor also should include the provision of a resilient network. As Viya has discussed in meetings with Commission staff, network resiliency is an important factor.[65] There are various ways of increasing a network's resiliency, including undergrounding (where appropriate), use of high-wind rated poles and towers, provisions for back-up power, and the availability of on-island network operating center/core, recovery crews, and replacement/maintenance equipment.[66] Due to the subjective nature of resiliency decisions, however, Viya proposes that applicants be required to show that they will provide a resilient, hardened network as a condition of being permitted to participate in the competitive process, rather than as a separate evaluation factor.

Award Points for Above Baseline Service and Faster Deployment. To earn points for their proposals, applicants should be required to propose to provide service above the minimum service standard (using the CAF-II service tiers as increments) to a specified percentage of USVI

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[61] If there is only one round of proposals, there is no reason for them to be submitted confidentially. It is not clear how a multi-round process would work in this context.

[62] *Connect America Fund et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11894 ¶ 3 (2018).

[63] *Id.* at 12019 (Statement of Chairman Ajit Pai).

[64] This includes 25/3 Mbps speed, a minimum usage allowance of the higher of 150 GB per month or the average usage of a majority of fixed broadband customers, and latency at or below 100 milliseconds. 47 C.F.R. § 54.309.

[65] *See* Viya March 22 Ex Parte, Att. at 23.

[66] *Id.*

locations each year over a six-year period. To reward more rapid deployments that bring the benefits of higher-quality broadband to the people of the USVI sooner, the Commission should provide points for each year in which an applicant commits to provide service that is faster than the 25/3 Mbps baseline minimum ("Above Baseline Service") beginning with Year 2. The number of points available each year should be based on the percentage of locations that the applicant commits to provide Above Baseline in that year. In addition, bonus points should be awarded to applicants that commit to provide gigabit-level service ("Gigabit Service").

The chart below shows Viya's proposed point values for the provision of Above Baseline and/or Gigabit Service to categories of location percentages during each year of the six-year potential deployment term:

	Above Baseline Deployment Points			Gigabit Service Bonus Points		
% of locations	50-74%	75-94%	95+%	50-74%	75-94%	95/+%
Points for achieving coverage by the end of Year 2	5	10	15	+2	+4	+5
Points for achieving coverage by the end of Year 3	5	10	15	+2	+4	+5
Points for achieving coverage by the end of Year 4	5	10	15	+2	+4	+5
Points for achieving coverage by the end of Year 5	5	10	15	+2	+4	+5
Points for achieving coverage by the end of Year 6	5	10	15	+2	+4	+5
Maximum points available over 6 years (awarded for commitment to achieve deployment percentages by the end of Year 2)	25	50	75	+10	+20	+25

As a concrete example, consider the scoring for an applicant that commits to provide Above Baseline Service to 50 percent of the USVI by the end of Year 2. This same applicant commits to expand that Above Baseline Service to 75 percent of the USVI's locations by the end of Year 4 and to 95 percent of locations by the end of Year 6. Additionally, the applicant commits to reach 50 percent of locations with Gigabit Service by end of Year 5 and 75 percent of locations with Gigabit Service by the end of Year 6. This proposal would be scored as follows:

- The applicant would receive 5 points in each of Years 2 and 3 for achieving 50 percent Above Baseline Service, thereby accumulating a total of 10 points for these years.

- The applicant also would receive 10 points in each of Years 4 and 5 for achieving 75 percent Above Baseline Service, thereby adding an additional 20 points and bringing its cumulative score to 30 points.
- An additional 15 points would be awarded to the applicant in Year 6 for 95+ percent Above Baseline Service, increasing the applicant's cumulative score to 45 points.
- Finally, the applicant would receive an additional 6 bonus points for its Gigabit Service commitments, increasing its cumulative score to 51 points.

In summary, the proposal would be awarded 45 points for its Above Baseline Service deployment timeline and 6 additional bonus points for its Gigabit Service deployment commitments for a total score of 51 points. For clarity, this same scoring is demonstrated in the table below.

	Above Baseline Deployment Points			Gigabit Service Bonus Points			Total Points for Year
% of locations	50-74%	75-94%	95+%	50-74%	75-94%	95/+%	
Points for achieving coverage by the end of Year 2	5						5
Points for achieving coverage by the end of Year 3	5						5
Points for achieving coverage by the end of Year 4		10					10
Points for achieving coverage by the end of Year 5		10		2			12
Points for achieving coverage by the end of Year 6			15		4		19
Total Points for Commitment Level	10	20	15	2	4		**51 points**

* * * * *

Viya appreciates the Commissions commitment to help support the expansion, improvement, and hardening of communications networks in USVI and Puerto Rico in the wake of Hurricanes Irma and Maria while keeping rates affordable. Given the unique facts in the USVI, Viya again urges the Commission to reject the use of a competitive process to award the fixed Connect USVI Fund and instead award the support to Viya for a ten-year term. If the Commission nevertheless uses a competitive process, it must design it carefully to protect the residents of the USVI and ensure continuity of service. Viya's proposal for doing so is set forth herein.

Sincerely,

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